**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929**

**CRP.No. 118 of 2007()**
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**AGAINST THE ORDER DATED 15/12/2006 IN IA 1419 2006 IN OS.271/2006 of MUNSIFF COURT, THALIPARAMBA**
**.....**

**REVN. PETITIONER: PETITIONER/PETITIONER/IST DEFENDANT**
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**CHOLAMANDALAM INVESTMENT AND FINANCE CO LIMITED (PRESENTLY KNOWN AS CHOLAMANDALAM DBS FINANCE LTD),PARRY HOUSE,IIND FLOOR,OLD NO.234, NEW NO.2,N.S.C BOSE ROAD,CHENNAI 600 001,REP.BY ITS MANAGER - LEGAL SUDHAKAR S.SHENOY.**

**BY ADV. SRI.PHILIP T.VARGHESE**
**SRI.THOMAS T.VARGHESE**

**RESPONDENTS: RESPONDENTS/RESPONDENTS/PLAINTIFF & DEFENDANTS2,3**
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**1. ABDUL RAZAK,S/O.ABOOTTY HAJI, KEEZHTHEDATH VEEDU,IRIKKUR AMSOM DESOM.**

**2. JOINT RTO TALIPARAMBA,P.O THALIPARAMBA KANUR DISTRICT.**

**3. STATE GOVERNMENT,REPRESENTED BY DISTRICT COLLECTOR,KANNUR.**

**R1 BY ADV. SRI.C.KHALID**
**SRI.N.SASI**
**R3 BY GOVERNMENT PLEADER SMT.R. BINDU.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**ORDER ON I.A. 332 OF 2007**
**IN**
**C.R.P. NO.118 OF 2007**

**DISMISSED**

**16/7/07** **SD/- M.N. KRISHNAN, JUDGE.**

**[ True Copy ]**

**P.A. TO JUDGE.**

**M.N. KRISHNAN, J.**

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**C.R.P. NO. 118 OF 2007**

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**Dated this the 16th day of July, 2007.**

**O R D E R**

This revision petition is preferred against the order in I.A.1419/06 in O.S.271/06. The petition was filed under Section 8(1) of the Arbitration and Conciliation Act for referring the matter to the arbitrator. The Court below dismissed the same on the ground that no arbitration agreement was in force at the time of the institution of the suit and therefore the party cannot invoke the provisions under the agreement.

2. The learned counsel for the revision petitioner has given me a copy of the loan agreement for perusal wherein clause 23 is dealt with. Under clause 23 all disputes, differences and/or claims arising out this agreement whether during its subsistence or thereafter shall be settled by the arbitrator in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole arbitrator or an arbitrator nominated by the Chief Executive of the Company. Or in other words, the arbitration clause refers to the disputes during and after the subsistence of the agreement. So, prima facie one cannot throw away the case of the petitioner under clause 23 of the Arbitration Act.

3. The learned counsel for the respondent in the civil revision petition would contend that there is nothing to be arbitrated and there is no dispute. Even whether the matter is subject to arbitration or in other words, is arbitrable is to be decided by the Arbitrator. But, unfortunately, the Court below has not considered any of these aspects and even without looking into the arbitration clause had dismissed the application. The said approach is erroneous and therefore the order under challenge is set aside and the learned Munsiff is directed to consider the matter afresh in the light of the agreement clause, after hearing both sides. The original or the certified copy of the agreement shall be made available and produce before the Court for deciding the issue. Parties are directed to appear before the Court on 7.8.07.

The C.R.P. is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**

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